

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Homere Hyppolite	)	File No. EB-02-TP-276
4843 Devon Circle	)	NAL/Acct. No. 200232700017
Naples, Florida 34112	)	FRN 0007-3085-13
	)	

### FORFEITURE ORDER

**Adopted: March 24, 2003**

**Released: March 26, 2003**

By the Chief, Enforcement Bureau:

#### I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Homere Hyppolite for willful violation of Section 301 of the Communications Act of 1934, as amended ("Act").<sup>1</sup> The noted violation involves Mr. Hyppolite's operation of a radio station on 99.7 MHz without Commission authorization.

2. On July 15, 2002, the Commission's Tampa, Florida Field Office ("Tampa Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Mr. Hyppolite for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> Mr. Hyppolite filed a response to the NAL on August 16, 2002.

#### II. BACKGROUND

3. On May 14, 2002, agents from the Tampa Office investigated a complaint alleging that an unlicensed radio station was transmitting on frequency 99.7 MHz in the Naples, Florida area. A search of Commission records showed that there was no FM radio station licensed on 99.7 MHz in Naples, Florida. Using a mobile direction finding vehicle, the agents detected an FM radio station transmitting on 99.7 MHz and identified the source of the transmissions to be a residence located at 4843 Devon Circle, Naples, Florida. The agents observed an antenna mounted on a pole in a tree behind the residence. The agents took field strength measurements of the station's signal and determined that the station required a license to operate.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700017 (Enf. Bur., Tampa Office, released July 15, 2002).

<sup>3</sup> Under Section 15.239 of the Commission's Rules, 47 C.F.R. § 15.239, non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters.

4. Immediately after locating the radio station, the agents interviewed the occupant of the residence at 4843 Devon Circle. The occupant, who identified himself as Homere Hyppolite, admitted that he had been operating the unlicensed station prior to the interview. At the agents' request, Mr. Hyppolite turned off the transmitter. The agents hand delivered to Mr. Hyppolite a warning letter which advised him that operation of a radio station without a license violates Section 301 of the Act, warned him that operation of the unlicensed station must cease immediately, and listed the penalties for unauthorized operation of a radio station.

5. On July 15, 2002, the Tampa Office issued an *NAL* for a \$10,000 forfeiture to Homere Hyppolite for operating a radio station on May 14, 2002 without a license in willful violation of Section 301 of the Act. In his response to the *NAL*, Mr. Hyppolite seeks cancellation or reduction of the proposed forfeiture. According to Mr. Hyppolite, he was just testing the radio equipment and never intended to operate a radio station from his residence. Mr. Hyppolite also asserts that he immediately ceased operating the radio equipment at the request of the FCC agents. Finally, Mr. Hyppolite asserts that he is unable to pay the proposed \$10,000 forfeiture and provides financial information in support of his request for reduction of the proposed forfeiture to \$2,000.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Commission's Rules ("Rules"),<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Mr. Hyppolite's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

7. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."<sup>7</sup> Mr. Hyppolite does not dispute that he operated radio transmitting equipment on 99.7 MHz without a license on May 14, 2002. Mr. Hyppolite asserts that he was only testing the equipment and never intended to operate a radio station at his residence. However, when the FCC agents interviewed him on May 14, 2002, he told them that he was operating the station as a service for the community. In any event, it is not necessary to find that a rule violation was intentional or that the violator was aware that he or she was committing a rule violation to find a "willful" violation within the meaning of Section 503(b) of the Act.<sup>8</sup> Rather, the term "willful"

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The agents' measurements indicated that the station's field strength extrapolated to three meters was 1,737,906  $\mu$ V/m. Thus, the station operating on 99.7 MHz exceeded the permissible level for a non-licensed low-power radio transmitter by 6,952 times.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 301.

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate

simply requires that the violator knew that he or she was taking the action in question, irrespective of any intent to violate the Commission's rules.<sup>9</sup> Accordingly, we conclude that Mr. Hyppolite willfully violated Section 301 of the Act.

8. Although Mr. Hyppolite asserts that he immediately ceased operation of the radio equipment at the request of the FCC agents, the Commission has repeatedly stated that remedial efforts to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>10</sup> Nevertheless, after considering the financial information provided by Mr. Hyppolite in support of his claimed inability to pay the proposed \$10,000 forfeiture, we conclude that reduction of the forfeiture to \$2,000 is appropriate.

9. We have examined Mr. Hyppolite's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mr. Hyppolite willfully violated Section 301 of the Act, but we reduce the forfeiture for this violation from \$10,000 to \$2,000.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>11</sup> Homere Hyppolite **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for willful violation of Section 301 of the Act.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>12</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232700017 and FRN 0007-3085-13. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>13</sup>

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commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> *Id.*

<sup>10</sup> See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV/L, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Homere Hyppolite, 4843 Devon Circle, Naples, Florida 34112.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau